

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

TIAA COMMERCIAL FINANCE, INC.)
f/k/a EVERBANK COMMERCIAL)
FINANCE, INC.,)

Plaintiff,)

v.)

Case No: 6:19-cv-360

SOUTHWESTERN COACHES, INC.)
and TIMOTHY HANCOCK,)

Defendants.)

COMPLAINT

Plaintiff TIAA Commercial Finance, Inc. f/k/a EverBank Commercial Finance, Inc. (“TIAA”) states its claims against Defendants Southwestern Coaches, Inc. (“SCI”) and Timothy Hancock (“Hancock”), as follows:

PARTIES

1. Plaintiff TIAA is a Delaware corporate entity with its principal place of business in Parsippany, New Jersey. TIAA is therefore a citizen of Delaware and New Jersey for purposes of 28 U.S.C. § 1332. TIAA appears herein by and through its counsel of record.

2. Defendant SCI is a Texas corporate entity with its principal place of business in Killeen, Texas. SCI is therefore a citizen of Texas for purposes of 28 U.S.C. § 1332. SCI may be served with process by and through its registered agent for service of process, William T. Wilson, 100 West Adams Ave., Suite 301, Temple, TX 76501, or at whatever location at which he may be found.

3. Defendant Hancock is an individual who resides in Killeen, Texas. Hancock is a citizen of Texas for purposes of 28 U.S.C. § 1332. Hancock may be personally served with process at his usual place of residence, 2907 Tortoise Lane, Killeen, TX 76542-2630, or at whatever location at which he may be found.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction of this action based upon complete diversity of citizenship under 28 U.S.C. § 1332. The amount in controversy exceeds, exclusive of interest and costs, the sum of seventy-five thousand dollars (\$75,000.00), as TIAA seeks liquidated damages in an amount not less than \$261,757.96.

5. The Court has personal jurisdiction over Defendants because Defendants are Texas residents.

6. Venue is proper in this District and Division because Defendants reside in Bell County in this District.

BACKGROUND

7. On or about December 11, 2014, TIAA and SCI entered into a Master Security Agreement and Note and Schedule (collectively, the “Loan Documents”), whereby TIAA loaned \$469,835.00 to SCI and SCI promised and agreed to repay same pursuant to certain express terms set forth in the Loan Documents (the “Loan”). The Loan was secured by a commercial motor coach bus that SCI owned. SCI defaulted on its repayment obligations on the Loan. TIAA foreclosed on the collateral and sold the bus in a commercially reasonable manner. After applying the net proceeds generated by such sale to the indebtedness owed under the Loan, SCI owed a deficiency balance to TIAA in the amount of \$261,757.96, as of January 18, 2019, plus continuing interest, costs and fees. Despite repeated demands, SCI has failed and refused to pay the deficiency

amount to TIAA and remains indebted to TIAA under the Loan Documents.

8. Defendant Hancock personally guaranteed all obligations and indebtedness owed by SCI to TIAA under the Loan by signing a Personal Guaranty in December 2014 (“Guaranty”) in favor of TIAA. Hancock has failed and refused to pay the deficiency amount to TIAA under the Guaranty.

COUNT I – BREACH OF CONTRACT

9. TIAA incorporates each of the foregoing allegations as if set forth herein.

10. TIAA and SCI entered into the Loan Documents for good and valuable consideration, each of which is a valid and binding contract. TIAA has fully performed its obligations under the Loan Documents, but SCI has failed and refused to perform or satisfy its obligations under the Loan Documents. SCI is in breach of contract by, among other items, failing to repay the deficiency amount owed to TIAA under the Loan Documents, for which TIAA hereby sues in the amount of \$280,217.83, as of June 10, 2019, plus continuing interest, costs and fees.

11. All conditions precedent to TIAA’s right of recovery against SCI, if any, have been performed, waived or have occurred.

COUNT II – BREACH OF GUARANTY

12. TIAA incorporates each of the foregoing allegations as if set forth herein.

13. Defendant Hancock executed the Guaranty in favor of TIAA for good and valuable consideration, which is a valid and binding contract. TIAA has fully performed its obligations relative to the Loan, but Hancock failed and refused to pay TIAA the deficiency balance that SCI owes to TIAA under the Loan Documents and the Guaranty, respectively. As a result of Hancock’s breach of the Guaranty, TIAA has sustained damages. TIAA is therefore entitled to recover its

damages caused by Hancock's breach of the Guaranty in the amount of \$280,217.83, as of June 10, 2019, plus continuing interest, costs and fees.

14. All conditions precedent to TIAA's right of recovery against Hancock, if any, have been performed, waived or have occurred.

ATTORNEYS' FEES AND INTEREST

15. TIAA incorporates each of the foregoing allegations as if set forth herein.

16. As a result of Defendants' breaches of the respective Loan Documents and the Guaranty, TIAA has been forced to retain Nesbitt, Vassar & McCown, L.L.P. to prosecute its claims against Defendants in this case. TIAA hereby seeks to recover from Defendants its reasonable and necessary attorneys' fees incurred in the prosecution of this lawsuit against Defendants under the terms of the Loan Documents. TIAA is also entitled to recover prejudgment interest at the contractual rate specified in the Loan Documents. TIAA lastly seeks post-judgment interest and costs of court.

WHEREFORE, TIAA Commercial Finance, Inc. requests judgment against Defendants Southwestern Coaches, Inc. and Timothy Hancock, jointly and severally, for actual damages as set forth herein, attorneys' fees, pre- and post-judgment interest, costs, and for such other and further relief, general or special, to which it may show itself to be justly entitled.

Respectfully submitted,

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